UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,338	04/07/2004	Sean Christopher Endler	81486 7114	8133

37123 7590 08/12/2008

FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE SUITE 1600
CHICAGO, IL 60603

EXAMINER	
DANIELS, ANTHONY J	

ART UNIT	PAPER NUMBER
2622	

MAIL DATE	DELIVERY MODE
08/12/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/820,338	ENDLER ET AL.	
	Examiner	Art Unit	
	ANTHONY J. DANIELS	2622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-25*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Lin Ye/
Supervisory Patent Examiner, Art Unit 2622

Anthony J. Daniels
AU 2622

As to Applicant's arguments regarding claim 19 and USC 112 rejection, the examiner respectfully disagrees with the applicant's assertion that the limitation, "…comparing the number of viewers with a predetermined minimum number of votes, wherein the content is not displayed if the number of viewers does not meet the predetermined minimum number of votes.", is inherent in the specification. According to Figure 7, the only basis for selecting content is the rating value. Following the flow of Figure 7, a rating value is computed and content is selected (Block 730 and 740) before the check is performed. The ambiguity that arises is what the rating value will be if the the predetermined number of votes is not satisfied. The specification states that no rating value is computed when a sufficient number of votes is not received (p. 18, Lines 7-10). However, a rating value is supposedly computed in Block 730. If even the examiner were to assume that the rating value is set to zero after the check, this content would already have been selected in Block 740. If the check were to be performed before the the rating value is computed (i.e. Block 750 before Block 730), then such a feature would be inherent. However, Figure 7 as is, does not show this and only allows for the limitation, content is not displayed if the rating value is below a predetermined threshold.

As to Applicant's arguments regarding claims 1 and 15 and the Franken in view of Zilliacus rejection, applicant argues, "the Zilliacus publication also does not teach or make obvious receiving a vote on the content, wherein the vote reflects the quality of the content and updating the profile information associated with the content to reflect the vote." Instead, Zilliacus discusses "that viewers will be polled for their views on some topic presented in the Program A... then receive a voting menu on their mobile terminal 10" (Zilliacus, paragraphs 33 and 34). The vote of Zilliacus does not reflect the quality of content; instead the vote is in response to a topic presented in the content and not the content itself." The examiner agrees that the vote does represent views on the topic of the programming. However, the vote does not only represent views on the topic. Zilliacus discloses that the registration to vote represents an interest in the voting and thus in the programming. Also, the examiner submits that Zillacus must be viewed in the context of the combination with Franken. In its broadest sense, Zilliacus teaches voting in interactive video systems. It is also submitted that Franken teaches the notion of highest viewership which does represent a level of quality. Taking Zilliacus' broad sense of voting in interactive video and adding it to the Franken reference to achieve the receipt of highest viewership based on voting allows for the advantages cited in the previous Office Action; namely, avoiding false positives. Furthermore, Applicant argues that neither Franken nor Zilliacus teach the creation or updating of profile information. The examiner submits that the listing of the programming must include the name or some sort of identifier to let the viewers know what program is being viewed and once a rank is determined, there is some sort of association with the program. The act of associating a rank with the program is, in the interpretation of the examiner, an update. Both the program name or identifier and the rank are interpreted to be profile information as set forth in the previous Office Action.

As to Applicant's request for additional supporting evidence for the Official Notice statement taken in claims 4-6,10 and 11, the examiner directs applicant to subclass 348/207.99 and subclass 348/231.4. Subclass 348/207.99 is digital camera art's broadest subclass and is replete with references that disclose digital video cameras that acquire digital images. Subclass 348/231.4 is a digital video camera subclass replete with references that disclose audio recorders connected to digital video cameras.

As to Applicant arguments regarding claim 12, Applicant asserts, "the combination of Franken and Zilliacus further fails to teach or make obvious at least a rating value is determined for the content based on the vote. " The examiner respectfully disagrees with this assertion and submits that Franken does not teach a rating value based on vote. However, the rating value (rank) is based on highest viewership, which when combined with Zilliacus, is based on the vote.

As to Applicant's assertion that the examiner's interpretation of claim 14 is unreasonably broad, the examiner respectfully disagrees and submits that in the present application, the display of content with sufficiently high rankings is dependent upon a viewer turning on the display. The examiner believes that this additional requirement is on par with the additonal requirement of displaying the recorded. The present application, as with Franken, provide the content to be displayed. Neither Franken nor the present application actually perform the act of displaying.

The arguments set forth regarding Franken, Zilliacus and Peliotis are believed to have been answered as the limitations at issue are not taught by nor were they intended to be met by Peliotis.

Applicant states, "With regards to claim 18, the combination of Franken, Zillliacus, Peliotis and Lautzenheiser fails to teach or make obvious comparing the number of viewers with a predetermined minimum number of votes, wherein the content is not displayed if the number of viewers does not meet the predetermined minimum number of votes." Claim 18 does not recite this. Claim 19 does. Claim 19 is rejected under USC 112. Those arguments have been addressed. The limitations of claim 18 are clearly met by Lautzenheiser.

The examiner believes all arguments have been addressed.